

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

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Date: March 20, 2009 Name: Richard E. Stanley Jr. (Reg. No. 45,662) Signature: /Richard E. Stanley, Jr./

Our Case No. 8627-431  
Client Ref. No. PA-5498-RFB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                                |   |                              |
|--------------------------------|---|------------------------------|
| In re Application of:          | ) |                              |
|                                | ) |                              |
| James B. Hunt                  | ) |                              |
|                                | ) | Examiner: Melissa K. Ryckman |
| Serial No.: 10/815,105         | ) |                              |
|                                | ) | Group Art Unit No.: 3773     |
| Filing Date: March 31, 2004    | ) |                              |
|                                | ) | Confirmation No. 6585        |
| For: STENT-GRAFT WITH GRAFT TO | ) |                              |
| GRAFT ATTACHMENT               | ) |                              |

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

Mail Stop: Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Examiner's Answer dated February 19, 2009, Applicant submits this Reply Brief in support of the appeal of the final rejection of claims 1-27 and 36.

### **III. Status of Claims**

Claims 1-27 and 36 are currently pending and have been rejected.

Claims 28-35 have been cancelled.

The rejections of claims 1-27 and 36 are being appealed in this appeal.

## **VI. Ground of Rejection to be Reviewed on Appeal**

A. The Examiner has rejected claims 1-11, 13-14 and 16-19 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. (U.S. Patent No. 5,843,166) in view of Jacobs et al. (U.S. Patent No. 6,387,123).

B. The Examiner has also rejected claims 15 and 24-27 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Buirge et al. (U.S. Patent Pub. No. 2001/0034550).

C. The Examiner has also rejected claim 12 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Lombardi et al. (U.S. Patent No. 6,579,314).

D. The Examiner has also rejected claims 20-23 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Buirge et al. in view of Lombardi.

E. The Examiner has also rejected claim 36 as being anticipated under 35 U.S.C. § 102(b) by Lentz et al.

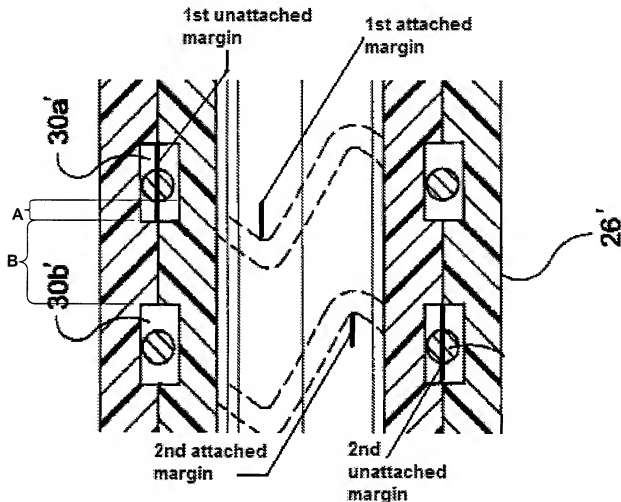
## VII. Argument

A. Claims 1-11, 13-14 and 16-19 are not obvious over Lentz et al. in view of Jacobs et al.

In the Examiner's Answer, the Examiner suggests a further modification of the proposed combination of Lentz et al. and Jacobs et al. that is neither taught by the references and changes the principle of Lentz et al. Specifically, the Examiner states: "Regarding this combination, the unattached margin would be surrounding the struts connecting the annular rings, this unattached margin allows motion because of openings 30a' and 30b', Lentz teaches the struts can move because of these pockets (col. 5, l. 48,49)." (Examiner's Answer at 13). However, the Examiner has not contested Applicant's position that "the attached areas disclosed in Lentz et al. wrap all the way around the circumference of the stent-graft." (Applicant's Brief at 7). Thus, the Examiner is further proposing to modify the combination by adding longitudinal unattached margins along the longitudinal struts of Jacobs et al. This further modification is not disclosed or supported in either Lentz et al. or Jacobs et al. Moreover, this additional modification changes the principle of Lentz et al. from a stent-graft with attached regions that wrap around the entire circumference of the stent-graft to a stent-graft with discretely attached areas. This is not an example of an obvious modification to the prior art. Instead, this is an example of hindsight being used to improperly reconstruct Applicant's claimed invention from prior art references that do not teach or suggest all of the claimed limitations.

The Examiner's interpretation of claims 2, 8, 10 and 18 is also incorrect. These claims require the attached area to be smaller than the unattached margin. In support of the Examiner's rejection, the Examiner has provided a figure that allegedly labels the unattached margin. (Examiner's Answer at 7). In the Examiner's figure, the Examiner has identified the entire length of the pocket from one attached area to another attached area. However, this is not the unattached margin that is claimed. Specifically, claim 1 defines the unattached margin as being "between said first attached area and an edge of said first radial opening." As shown below in the marked-up version of the Examiner's figure, the unattached margin in Lentz et al. is distance A and the attached

area is distance B. Clearly, the attached area B is larger than the unattached margin A. Thus, Lentz et al. discloses the opposite of Applicant's claims and cannot anticipate the claims.



**Fig. A: Fig. 3 of Lentz**

The Examiner also appears to admit that Lentz et al. and Jacobs et al. do not disclose the limitations of claim 5. Claim 5 requires the attached areas to be adjacent to opposite sides of the struts to restrict movement of the stent in a second direction. However, the Examiner's own arguments admit that Lentz et al. allows movement in both the axial and circumferential directions. (Examiner's Answer at 7 ("small motion of the stent in the axial direction is allowed because the stent is not attached to the graft layers."); Examiner's Answer at 13 ("the Examiner notes that a small motion of the stent

in the circumferential direction is allowed because the stent is not attached to the graft layers.”)). Thus, this limitation is not disclosed by Lentz et al. and Jacobs et al.

B. Claims 15 and 24-27 are not obvious over Lentz et al. in view of Jacobs et al. in view of Buirge et al.

Applicant's arguments in Applicant's Appeal Brief stand as previously presented.

C. Claim 12 is not obvious over Lentz et al. in view of Jacobs et al. in view of Lombardi et al.

Applicant's arguments in Applicant's Appeal Brief stand as previously presented.

D. Claims 20-23 are not obvious under Lentz et al. in view of Jacobs et al. in view of Buirge et al. in view of Lombardi.

Applicant's arguments in Applicant's Appeal Brief stand as previously presented.

E. Claim 36 is not anticipated by Lentz et al.

The Examiner's interpretation of claim 36 is also incorrect. In the Examiner's Answer, the Examiner states: "Regarding the arguments of the attached margin extending peripherally all around the first unattached margin, the Examiner is interpreting 'all around' to be circumferential, and the first attached margin spreads circumferentially along the top of the first unattached margin." (Examiner's Answer at 13-14). First, claim 36 does not require the attached area to extend peripherally all around the unattached margin as the Examiner asserts. Instead, the claims require the opposite of what the Examiner has asserted—the unattached margin extends peripherally around the attached area. Second, the Examiner's interpretation of "all around" as meaning circumferential is inconsistent with the claim language and the specification. Specifically, claim 36 requires that the unattached margin "extends peripherally all around said first attached area." Thus, the reference to "all around" is with respect to peripherally around the attached area, not circumferentially around the stent. This is shown in Figure 1 of Applicant's specification, where the unattached margins 24 extend peripherally all around the attached areas 22.

# **VIII. Conclusion**

Because the Examiner's claim interpretations are incorrect; the Examiner's interpretations of the prior art are incorrect; and the prior art of record does not disclose all of Applicant's claim limitations, Applicant respectfully requests that the Board of Patent Appeals and Interferences reverse the Examiner's rejection of claims 1-27 and 36.

Respectfully submitted,

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